

**BOARD OF APPEALS CASE NO. 5178**

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**BEFORE THE**

**APPLICANTS: Gilles & Kathy Syglowski**

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**ZONING HEARING EXAMINER**

**REQUEST: Variances for the existing swimming pool and decking within the required setbacks; 3704 Trail Wood Court, Abingdon**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

**HEARING DATE: November 1, 2001**

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**Aegis: 9/26/01 & 10/3/01**

**Record: 9/28/01 & 10/5/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Gilles R. Syglowski & Kathy M. Syglowski, are requesting a variance ,pursuant to Section 267-26C(5)(b) of the Harford County Code, to allow existing pool decking to be less than 3 feet from the property line, a variance pursuant to Section 267-26C(6) to allow the existing pool and decking to be within the 5 foot recorded easement, and a variance pursuant to Section 267-26D(3) to allow the existing pool to be less than 10 feet from the property line in an R3/COS District.

The subject parcel is located at 3704 Trail Wood Court, Abingdon, Maryland 21009, in the First Election District, and is more particularly identified on Tax Map 62, Grid Number 0002C, Parcel 0678, in the subdivision of Harford Town. The parcel contains approximately 0.20 acres.

The Applicant, Kathy M. Syglowski appeared, and testified that she and her husband, Co-Applicant Gilles R. Syglowski are the owners of the subject property. She indicated that she had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein. The witness described her property as an irregularly shaped panhandle lot, improved by a single-family bi-level dwelling with an attached deck, a wooden patio, and an in-ground pool with a concrete apron. The property is also improved by a split rail fence located around the pool, with wire mesh attached to the inside.

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Ms. Syglowski testified that the irregular shape of the property limits the area within which they can build a pool on their property. She stated that the subject property backs to another lot, and an area of homeowners common area open space. There will be no further building allowed behind the subject property. The Applicant also referred to the site plan (Staff Report Attachment 2) which she shows the location of the existing home, deck, pool with concrete apron, and fence.

Ms. Syglowski testified that the original plat, filed by the contractor who built her home, contained discrepancies in the boundary lines. In addition, the pool contractor utilized a site plan which did not show the existing rear deck, and the pool therefore failed to meet setback requirements. Were it not for this error, the original plat shows that the pool and decking are constructed within Code regulations. After receiving a zoning violation notice, the Applicants had a new survey completed by Ward & Associates. The second survey, which was done in the summer of 2001, indicated that the original plat filed by the contractor was incorrect. As soon as the Applicants discovered that the fence and pool apron encroached into the open space behind their lot, and the adjacent lot number 285, they corrected the violation immediately. This correction was made by removing a corner of the pool decking and fence.

The witness then described several photographs attached to the Department of Planning and Zoning Staff Report as Attachment 6A. The top photo shows the subject property, the front of her home, and the surrounding properties. The third photo shows her home, attached deck, pool, concrete pool decking and fence. The bottom photo shows the adjacent lot number 270, and the open space behind the Applicant's property.

Ms. Syglowski then stated that there are other pools, with similar decking, located within her neighborhood. She testified that her pool and decking are compatible with similar improvements located within Harford Town, and she does not believe the requested variances would have any adverse impact on neighboring properties.

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Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by the Department. Mr McClune testified that the Department recommended approval of the subject request in it's October 8, 2001 Staff Report. It found that the property is unique because it has an unusual shape, and is bordered in the back by open space which is classified as both Natural Resource District and Homeowner's common area.

According to the witness, all three requested variances are necessitated by the encroachment on the north corner of the property line, immediately adjacent to Lot No. 270. At that one point, the pool decking extends to the property line, is located within the 5 foot drainage and utility easement, plus the pool is located within 10 feet of the property line. The witness verified that the encroachment on the western side of the property was corrected by the Applicants prior to the hearing. Mr. McClune also testified that the Department of Public Works had reviewed the subject application due to the encroachment into the drainage and utility easement. That Department determined that the improvements did not to be removed at this time, however, they must be removed at the owners expense if they are ever found to contribute to any drainage problems in the future.

Mr. McClune stated that in his opinion, the granting of the requested variance for the existing pool and concrete apron is consistent with good planning and zoning, and that there would be no benefit to removing the improvements at this time. He also testified that in his opinion, the existing pool and decking do not have any adverse impact on neighboring properties.

Robert Bogar who lives at 1124 Harford Town Drive, Abingdon, Maryland 21009, appeared and testified that he is the owner of lot 274, which is immediately adjacent to the subject property. He indicated that his home is located closer than any other to the Applicant's property, and that in his opinion he suffers no adverse impact as a result of the existing pool and decking.

No witnesses appeared in opposition to the requested variance.

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### **CONCLUSION:**

The Applicants, Gilles R. Syglowski & Kathy M. Syglowski, are requesting a variance, pursuant to Section 267-26C(5)(b) of the Harford County Code, to allow existing pool decking to be less than 3 feet from the property line (existing 0 foot), a variance pursuant to Section 267-26C(6), to allow the existing pool and decking to be within the 5 foot recorded easement, and a variance pursuant to Section 267-26D(3) to allow the existing pool to be less than 10 feet from the property line (existing 4 foot 5 inches) in an R3/COS District.

Section 267-26C(5)(b) of the Harford County Code provides the following setback requirements:

“Residential detached accessory structure: six (6) feet from any principal structure and three (3) feet from side and rear yard lot lines except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement.”

Section 267-26C(6) of the Harford County Code states that “[n]o accessory use or structure shall be located within any recorded easements area.”

Section 267-26D(3) of the Harford County Code provides:

“Recreational facilities, such as swimming pools and tennis courts, if the facilities are used by the occupants or guests of the principal use and no admission or membership[ fees are charged, provided that the edge of the facility, not including security fences, shall be located not less than the (10) feet from any side or rear lot line. For community pools and tennis courts, the edge of the facility shall be located no less than fifty (50) feet from any residential unit or side and rear lot line.”

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Section 267-11 of The Harford County Code permits the granting of variances, stating:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The property is an irregularly shaped panhandle lot which backs to another lot, and an area of open space designated as both Natural Resource District, and a Homeowners Common Area. The irregular shape of the property limits the building envelope for the construction of a pool, with decking, on the property. There was no opposition testimony introduced to contradict any of these findings, which are supported by the Department of Planning and Zoning Staff Report. Thus, the first prong of the Cromwell test has been met.

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Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Officer finds that literal enforcement of the Code would result in a real and unreasonable hardship to the Applicants by forcing them to remove the existing pool, concrete apron, and fence.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. The pool and concrete apron are compatible with other pools and decking in the neighborhood. The only neighbor to testify stated that his home is the closest one to the subject property, and that he does not believe the existing pool has any adverse impact on his property.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicant amend the existing permits for the pool deck and fence to accurately reflect the existing conditions.
2. The Applicant shall be responsible for the cost of removal of the pool, concrete apron and/or fence, if in the future it is determined that they contribute to any drainage problems.
3. That the Applicant not encroach further into the setbacks than the distance requested herein.

Date      **NOVEMBER 30, 2001**

**Rebecca A. Bryant**  
**Zoning Hearing Examiner**